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STATE OF WISCONSIN

CIRCUIT COURT DANE COUNTY

Branch 7

Case No. 04-CV-1709

Unclassified - Civil:30703

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STATE OF WISCONSIN,

Plaintiff,

v.

AMGEN INC., et al.,

Defendants.

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830 Third Avenue

New York, New York 10022

January 25th, 2007

11:42 a.m.

HIGHLY CONFIDENTIAL Videotaped Deposition of

Defendant SANDOZ, INC., by: HECTOR ARMANDO KELLUM,

Thursday, January 25th, 2007, 11:42 a.m. at the

offices of Kirby, McInerney and Squire, held

before a Notary Public of the State of New York

at the above time and place.

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1 A. That time frame spans beyond my direct
2 experience with Sandoz. So, I can't answer it
3 categorically that in every instance that is the
4 case. But I would expect that we have been sending
5 those prices to that pricing compendia for that
6 time frame.

7 Q. For what time period are you certain
8 from either your own personal knowledge or inquiry
9 you made to prepare for today's deposition that
10 Sandoz has sent both AWP and WAC to these pricing
11 publications like First Data Bank?

12 A. Yeah, in preparing for the deposition, I
13 talked to a couple of people in the company, so I
14 think I would be comfortable saying back to maybe
15 1999, '98, people have confirmed that that was
16 sort of the practice.

17 Q. And can you tell me who you spoke to to
18 get that information?

19 A. Yes. I spoke to Ira Beringer.

20 Q. What is his current job title?

21 A. I believe his title is Director of
22 Business Development.

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1 my experience, that has been the case. They have
2 published the AWP and WAC, that we submitted to
3 them.

4 Q. And sitting here today, can you identify
5 any specific instance in which First Data Bank
6 published an AWP or a WAC, for a Sandoz drug that
7 was different than the AWP or WAC, that Sandoz
8 reported to First Data Bank?

9 A. I can't cite a specific instance.
10 However, I do or I am aware that from time to time
11 there have been discrepancies between what we have
12 submitted to them and what they have published.

13 Q. Can you describe those instances?

14 A. I can't describe them in a lot of detail
15 other than, you know, for whatever reason, we have
16 gotten inquiries, sometimes from a customer or
17 from First Data Bank themselves, asking us to
18 verify something. And when we have done that,
19 have determined that they did not have the AWP,
20 and/or WAC, that we had you know, originally
21 submitted to them.

22 Q. What was the resolution of those

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1 discussions? That is, did First Data Bank wind up
2 publishing the AWP's and WAC's that you had
3 originally sent to it?

4 A. I believe after we have confirmed what
5 the correct AWP and WAC was, then they published
6 those prices. That's my belief.

7 Q. Does Sandoz also send WAC's and AWP's to
8 the Redbook for Sandoz products?

9 MR. GALLAGHER: Objection to the form of
10 the question.

11 A. Yes, they receive that pricing.

12 Q. And are those the same WAC's and AWP's,
13 that Sandoz sends to First Data Bank?

14 A. Yes.

15 MR. GALLAGHER: Objection to the form of
16 the question.

17 A. Yes, they are the same.

18 Q. Has Sandoz ever been asked by First Data
19 Bank, Redbook or Medispan, to verify the WAC's and
20 AWP's, that those companies publish for Sandoz
21 drugs?

22 A. In my experience, yes, they have from

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1 Q. So, it's your testimony that the AWP,
2 for a Sandoz generic drug is always ten percent of
3 the AWP, for the corresponding brand name drug?

4 MR. GALLAGHER: Objection. Misstates
5 prior testimony.

6 A. No, I can't say that. I haven't looked
7 at every AWP, for all of the products that you
8 have requested. So, it's quite possible that
9 there is some that are not a ten percent discount.
10 I can just say that in today's practice, of what
11 I'm doing, that would be our typical methodology
12 would be to, if we were launching a generic drug,
13 is to price our generic AWP, at a ten percent
14 discount to the brand AWP.

15 Q. Is that regardless of what the actual
16 prices in the marketplace are for Sandoz drugs?

17 MR. GALLAGHER: Objection to the form of
18 the question.

19 A. Can you repeat that question?

20 Q. Sure. Is that true that Sandoz will set
21 the AWP, for its generic, at the time of launch,
22 at ten percent of the brand AWP, regardless of

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1 basically, to get them to pay their invoice within
2 the terms of the -- our invoices would for example
3 say two percent discount if paid within thirty
4 days basically net thirty, thirty-one or something
5 like that. So if they submit payment for that
6 invoice before the 30th day, then they would be
7 entitled to a prompt pay discount.

8 Q. Now, in those instances in which Sandoz
9 sells indirectly to a retail pharmacy through a
10 wholesaler and there is a contract between Sandoz
11 and the retail pharmacy, the highest price for
12 that contract --

13 MR. LIBMAN: Strike that. That was a
14 mouth full.

15 Q. -- in instances in which Sandoz sells
16 indirectly to a retail pharmacy through a
17 wholesaler and there is a contract in place
18 between Sandoz and the retail pharmacy that sets
19 the price, that price is always WAC or lower; is
20 that correct?

21 MR. GALLAGHER: The contract price
22 you're talking about?

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1 MR. LIBMAN: Yes, sir.

2 A. Yes. The contract price in my
3 experience has -- is typically lower than WAC,
4 yes.

5 Q. How much lower than WAC, when you say
6 typically lower than WAC?

7 A. There is no one answer.

8 Q. Can you give me a range?

9 A. Could be -- well a range of the --

10 Q. Of the percent below WAC that the
11 contract price?

12 A. -- could be at?

13 Q. Yes, sir?

14 A. It would depend obviously on the
15 particular product and the market for that
16 product. So it could range anywhere from, I have
17 seen contract prices at WAC. So it could be from
18 zero to a discount of maybe eighty to ninety
19 percent on the high side.

20 Q. How frequently is it the case that the
21 percentage discount off WAC in this type of
22 transaction is eighty to ninety percent?

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1 "FYI, I have also included old and new Cefadroxil
2 AWP and WAC. Remember that even though AWP and WAC
3 are being adjusted on these products there will be
4 no contract price adjustments at this time." Do
5 you see that?

6 A. Uh-huh.

7 Q. If you look at the next page, which is
8 entitled Geneva Pharmaceuticals AWP/WAC changes
9 effective January 1, I'm sorry January 21, 2003.
10 Cefadroxil is listed at the bottom there the last
11 two lines, do you see that?

12 A. Yes.

13 Q. Do you see by looking across there that
14 the new AWP for those two forms of Cefadroxil has
15 been increased above the old AWP?

16 A. Yes.

17 Q. And the same is true that the -- with
18 respect to WAC that is the new WAC's for those two
19 forms of Cefadroxil, are being increased above the
20 old WAC's?

21 A. Yes.

22 Q. And according to this email, the first

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1 page that is being done even though quote "there
2 will be no contract price adjustments at this
3 time." Do you see that?

4 A. Yes.

5 MR. GALLAGHER: Objection no foundation.

6 MR. LIBMAN: I'm just asking if that's
7 what the words say. Is that objectionable?

8 MR. GALLAGHER: If that is the question,
9 no.

10 A. Yes, that's what it says.

11 Q. So this is an example of Sandoz raising
12 its WAC's and AWP's even though its contract
13 prices were not changing; correct?

14 MR. GALLAGHER: Let me object to the
15 form and object to the fact that I don't believe
16 this appears on any of the targeted drug lists for
17 any of the states at issue in this deposition.

18 A. Okay. The -- it appears you know as he
19 says, at this time I guess without -- I didn't
20 prepare anything for this obviously. So I don't
21 know what additional background there might be if
22 he means at this time if he means today, this

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1 week. But yet next we're taking contract price
2 increases which is a possibility. I don't know
3 the whole context and the whole story of what
4 might have occurred. So without that, it's really
5 hard to say you know, at this time today maybe
6 they didn't take the increase. But it's quite
7 possible they did this in preparation to do that.
8 I don't know that.

9 Q. Can you think of any other circumstances
10 in which it would be appropriate to raise an AWP
11 and a WAC on these drugs, even though the contract
12 price was not being adjusted?

13 MR. GALLAGHER: Objection to the form of
14 the question.

15 A. Can you repeat that question?

16 Q. Are you aware of any business reason
17 that would exist for raising an AWP and a WAC even
18 though the contract price is not changing?

19 MR. GALLAGHER: Objection to the form of
20 the question.

21 A. No, I'm not really aware of any. Let me
22 add to that. I the only thing I might add would